

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the June 11, 2007 Task Force Meeting
DATE: June 12, 2007

Participants

The following people participated in the Task Force meeting:

Task Force Members:

Marc M. Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Gail Patton	Sanders County Commissioner
Arvid Hiller	Mountain Water Company
Nate Hall	Avista
Fred Lurie	Blackfoot Challenge
Steve Hughes	Flathead Joint Board of Control
Jim Dinsmore	Granite Conservation District/Upper Clark Fork River Basin Steering Committee

Ex Officio Member

Sen. Verdell Jackson

Public

John Tubbs	DNRC Water Resources Division Administrator
Bill Schultz	DNRC Missoula Water Resources Regional Office Manager
Dr. David Shively	University of Montana, Department of Geography
Mark Reller	BPA
Mark Van Rinsum	Flathead Conservation District

Staff:

Gerald Mueller	Consensus Associates
Curt Martin	DNRC

Meeting Agenda

- May 7, 2007 Meeting Summary
- Discussion with John Tubbs, Water Resources Division Administrator
 - Task Force budget
 - Task Force membership
 - Task Force work plan
- Dr. Shively's Professional Paper on Task Force
- Public Comment
- Next Meeting

May 7, 2007 Meeting Summary

The Task Force made no change to the May 7, 2007 meeting summary.

Discussion With John Tubbs

Task Force Budget

The funding requested by the Task Force was included by the legislature in the DNRC budget for the coming biennium. Mr. Tubbs stated that in the future, he may be willing to consider including Task Force as a part of the process that develops the Governor's budget.

Task Force Membership

John Tubbs stated that while Task Force members must be formally appointed by DNRC Director Mary Sexton, he agrees that the members of the Task Force should be self-selected by groups wishing to be represented on the Task Force. By statute, the Salish and Kootenai Tribes must be allowed to appoint a Task Force member. Mr. Tubbs stated that it may be easier to convince Ms. Sexton of the merits of allowing groups to self-select using the Tribes as an example. Mr. Tubbs intends to meet with the Tribes to discuss their membership. He asked for a volunteer to join him in meeting with the Tribes to solicit their participation on the Task Force. Steve Hughes volunteered to do so.

Task Force Work Plan

Hungry Horse Contract - Gerald Mueller stated that thanks to the hard work of Senator Jackson and others, including Representative Taylor, the most recent legislature approved the Task Force legislative proposals related to Hungry Horse. Funding was approved for \$260,000 to contract with the Bureau of Reclamation's (BOR's) to develop a new funding allocation of Hungry Horse project costs to municipal, industrial and irrigation uses as well as flood control and hydropower generation. Mr. Tubbs stated that he has assigned Curt Martin, a Water Management Bureau Planner, to work with the Task Force and Tim Bryggman, a Water Management Bureau Economist, to work on the Hungry Horse contracting. DNRC's next step will be to discuss contracting with BOR.

Mr. Tubbs said that the state and the Clark Fork basin should pursue a dual track relative to Hungry Horse water. One track would involve a relatively small amount of water, e.g. 10,000 acre-feet, to meet the short-term basin needs for new water. BOR has indicated that it would likely approve a contract for on the order of 10,000 acre-feet from Hungry Horse. Given DNRC's recent Thompson River Cogeneration water right decision, water users may decide to contract directly with BOR for water instead of pursuing a new water right. Individual water users may face a speedier and simpler contracting process than the state. The second track is the larger water contract with the state. An important step towards the larger contract is figuring out the amount of water the state should request for a contract for Hungry Horse water as well as the duration of the contract. Montana will not be able to compete with the demands of downstream states until it does so.

The Task Force discussed a process that might lead to developing the amount of water that the state might pursue in a Hungry Horse contract. It tentatively agreed to the following steps:

- Determine an average amount of water use per person - Arvid Hiller volunteered to share the analysis done by Mountain Water concerning its system at a July or August Task Force meeting.
- Assess population forecasts for the Clark Fork River basin - Gerald Mueller will attempt to obtain the latest basin-wide projections from Dr. Larry Swanson of the Center for the Rocky Mountain West.
- Gather information on existing subdivision plans for the basin - DNRC is gathering this

information to present to a legislative committee, and it should be ready for the next Task Force meeting.

- Review the basin county growth policies to see if they contain water use projections - David Shively may be able to obtain the growth policy documents and comply water use projections.
- Combine the average use per person information with population projections to develop scenarios for future water use.

Basin Watershed Conference - DNRC previously contracted with Granite Conservation District to put on a conference aimed at all of the basin's watershed groups. Mike McLane was the lead in organizing this conference. After he left DNRC, the effort languished. A conference targeted at watershed groups in particular would likely address water quality/stream restoration efforts. John Tubbs stated that he is interested in a basin wide conference focused instead on the basin's water supply and growth. A concerted effort is needed to consider water supply implication of growth by the counties, which have basic growth planning responsibilities, and DNRC and the Montana Department of Environmental Quality, the state agencies charged with regulating water quantity and quality. Mr. Tubbs suggested that because of its water planning mandate, the Task Force would be a logical convening entity for such a basin conference. He also said that funding for the conference could be provided by DNRC in addition to the Task Force budget.

The Task Force agreed to assume the responsibility for organizing and convening a conference on basin water supply and growth. Gerald Mueller stated that he will discuss with the UM Department of Geography the possibility that it might co-convene such a conference along with DNRC as it did with the groundwater policy conference. Mr. Mueller will provide at the next Task Force meeting a document to initiate a Task Force discussion of the content of such a conference.

Water Right System Policy Paper - Prior to the last legislature, the Task Force considered preparing a policy paper addressing the state's existing system for allocating and managing water. The foundation of this system is the policy summarized by the simple phrase, "first-in-time, first-in-right." A number of factors are complicating or tending to frustrate this approach, e.g. the 35 gallon per minute/10 acre-feet per year well exemption, water right enforcement problems, the over-allocation of surface water, the court mandated conjunctive surface and ground water management, rapid growth in the mountainous areas of the state, etc. In the Clark Fork River basin, the lack of a reserved source of water to support future growth is also a complication. The Task Force agreed to pursue preparation of such a paper. Gerald Mueller passed out the outline of a policy paper he had prepared in August of 2006. See Appendix 1. He agreed to revise this outline and bring the revision to the next Task Force meeting.

Coordination with the Interim Water Policy Committee - Gerald Mueller noted that the 2007 legislature created an interim water policy committee. He passed out the draft work plan timeline prepared for the interim committee by its staff. This work plan will be consideration at the committee's July 10 and 11 meeting in Dillon. The meeting schedule for 2007 together with the basin focus and general topic for each meeting is as follows:

- July 10&11 (Jefferson/Madison River Basins) - Committee work plan, water law and court cases.
- August 16&17 (Upper Missouri River Basin) - Coordination of water quantity and quality regulation.
- September 12&13 (Clark Fork River Basin) - Monitoring and cumulative impact assessment.

- October 16&17 (Teton River Basin) - Exempt wells.
- November 15&16 (Bitterroot River Basin) - HB 831 case studies by the Montana Bureau of Mines and Geology.
- December 12&13 - Alternative water allocation methods, including leases, water right banks, market purchases, etc.

The Task Force agreed that it should seek to participate in the September 12&13 meeting which apparently will have a Clark Fork River Basin setting or focus.

Water Right Change Process - Individual Task Force members briefly discussed concerns about the water right change process. Because many basins are over-allocated from a legal perspective, water right changes will be fundamental to future water management. Change applications now require data and an accompanying level of proof that is hard to meet. Also, only the consumptive portions of a water right may be changed. The intent of the change process is to ensure that other water users, both junior and senior, continue to receive unaltered stream conditions. The Task Force will devote more time to this topic at a future meeting.

Dr. Shively's Professional Paper on Task Force

Dr. Shively intends to write a professional paper on the approach to water planning used by the Task Force and the issues it has addressed. He would like Mr. Mueller to collaborate with him on the paper. The Task Force agreed to Mr. Mueller's participation, which means that it will be offered the opportunity to review and comment on a draft of the paper.

Public Comment

- *When the water in a Hungry Horse contract would be used is as important to the total amount of water because of potential hydropower and fishery impacts.*
- *It is also important for the state to speak with one voice to BOR regarding the operation of Hungry Horse Dam. The Montana Department of Fish, Wildlife and Parks is seeking to reduce summer releases from Hungry Horse.*

Next Meeting

The next meeting is scheduled for Monday, July 2, 2007 at the Missoula DFWP conference room.

Appendix 1

Status of the First-In-Time, First-In-Right Water Right Allocation and Management System

- I. Introduction
 - A. Historically, water in Montana allocated and managed according to the first-in-time, first-in-right system.
 - B. Forces underway to change that system to one in which decisions are made by use priority and in which water is increasingly the servant of money rather than priority date.
- II. History of water allocation and use.
 - A. Pre-1973 Water Use Act
 - 1. New uses supported by new water rights.
 - 2. Individual and court water right administration and enforcement based first-in-time, first-in-right system.
 - 3. No centralized records.
 - 4. Ground and surface water managed separately.
 - B. Post-1973 Water Use Act
 - 1. Water rights permits issued by DNRC for new and changed water uses.
 - 2. Beginning of state-wide adjudication because of concern arising from coal development.
 - 3. Greater concern about protecting instream uses - water leasing program; Bean Lake III Supreme Court decision.
 - 4. Water reservations by public entities provide for future water needs in the Missouri and Yellowstone basins.
 - 4. Basin closures as perception increases of over appropriation.
 - 5. Ground water source of new water development.
 - 6. Greater concern about conjunctive management of surface and ground water - TU vs. DNRC Supreme Court decision.
 - C. Post Adjudication
 - 1. All water rights in enforceable water right decrees.
 - 2. Water right integrated - water management will have less of a local focus
 - 3. Diversions measured.
- III. Implications for First-in-time, First-in-right System
 - A. Creating domestic use priority outside of traditional water allocation and management system.
 - 1. 35 gpm/10 acre-ft/yr ground water permit exemption.
 - 2. DNRC "manifold" expands use of exemption in new subdivisions.
 - B. No water reservations or other means of providing for future uses in the Clark Fork River basin means that new water uses will depend on purchasing existing water rights, likely shifting water away from agriculture
 - C. Enforcement system increasingly complicated and expensive for individual water rights holders
 - 1. Influx of people unfamiliar with water rights creating more conflicts.
 - 2. Difficult to get timely decisions from district courts
 - 3. Water right integration will create new relationships among water rights and likely

reduce local focus of water management.

4. Water right integration will pose new challenges for decree enforcement via water commissioners.
5. Traditional agricultural water right holders cannot pay enforcement costs.